THE LEGISLATIVE ASSEMBLY OF
BRITISH COLUMBIA

Special Committee to Appoint a Merit Commissioner

Report

Fifth Session, Thirty-Seventh Parliament

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May 20, 2004

To the Honourable,
The Legislative Assembly of the
Province of British Columbia
Victoria, British Columbia

Honourable Members:

I have the honour to present herewith the *Report* of the Special Committee to Appoint a Merit Commissioner.

The *Report* covers the work of the Committee from March 24th to May 19th, 2004.

Respectfully submitted on behalf of the Committee.

Jeff Bray, MLA
Chair

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COMPOSITION OF THE COMMITTEE

MEMBERS

Jeff Bray, MLA	Chair	Victoria-Beacon Hill
Richard Lee, MLA	Deputy Chair	Burnaby North
Randy Hawes, MLA		Maple Ridge-Mission
Mike Hunter, MLA		Nanaimo
Jenny Kwan, MLA		Vancouver-Mount Pleasant
Brenda Locke, MLA		Surrey-Green Timbers
Sheila Orr, MLA		Victoria-Hillside
Gillian Trumper, MLA		Alberni-Qualicum

CLERK TO THE COMMITTEE

Craig James, Clerk Assistant and Clerk of Committees

COMMITTEE RESEARCHER

Jonathan Fershau, A/Research Analyst

TERMS OF REFERENCE

On March 4, 2004, the House approved a motion that a Special Committee be appointed to select and unanimously recommend to the Legislative Assembly, (pursuant to section 5 of the *Public Service Act*, R.S.B.C. 1996, c. 385) the appointment of an individual to be the BC Public Service Agency head, and Deputy Minister responsible for the Agency, and to hold office as the Merit Commissioner for the Province of British Columbia, and that the Special Committee so appointed shall have the powers of a Select Standing Committee, and is also empowered:

(a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
(b) to sit during any period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
(c) to adjourn from place to place as may be convenient; and
(d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment of the House, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon the resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

104-05174/

INTRODUCTION

Part 2 (B.C. Public Service Agency) of the *Public Service Act* [R.S.B.C. 1996, Chapter 385] specifies that a special committee of the Legislative Assembly must unanimously recommend to the Legislative Assembly that an individual be appointed to the position of Merit Commissioner, deputy minister responsible for the B.C. Public Service Agency, and agency head.

The Merit Commissioner's powers and duties under Part 4 of the *Public Service Act* include:

- conducting random audits of appointments to and from within the public service to assess whether
  - (i) the recruitment and selection processes were properly applied to result in appointments based on merit, and
  - (ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed,
- reporting audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made,
- reporting annually to the Legislative Assembly concerning the merit commissioner's activities under this Act.

Section 5(2.1) of the *Public Service Act* requires that an all-party special committee of the Legislative Assembly unanimously recommend the appointment of a person to be the Merit Commissioner for the province. In order for the appointment to take effect, the Committee's recommendation must be accepted by a majority of Members of the Legislative Assembly.

This report constitutes a recommendation to the Legislative Assembly for the appointment of the Merit Commissioner and deputy minister responsible for the British Columbia Public Service Agency and agency head. This appointment represents the first time an all-party parliamentary committee has recommended such an appointment.

SELECTION PROCESS

Meetings

The Committee conducted seven meetings for the purposes described below:

Wednesday, March 24, 2004	Organization and planning
Wednesday, March 31, 2004	Adoption of the business plan
Thursday, May 13, 2004	Interviews
Monday, May 17, 2004	Interviews
Tuesday, May 18, 2004	Deliberations
Wednesday, May 19, 2004	Deliberations

Applications

Over the period from April 10 to April 12, 2004, an advertisement was placed in four daily newspapers in British Columbia and in one national newspaper. Prospective applicants were asked to reply by April 23, 2004.

In response, the Committee received 19 applications for the position of Merit Commissioner and deputy minister responsible for the B.C. Public Service Agency. Of the applications, 11 were received from British Columbia and 8 from other Canadian provinces. All 19 applications were reviewed and assessed by a sub committee and the Committee agreed upon its recommendations. Based on the Members' individual appraisals of the applications, the Committee interviewed four candidates on May 13 and 17, 2004.

Position Profile

The dual position of Merit Commissioner and deputy minister responsible for the B.C. Public Service Agency unique among Canadian jurisdictions and has been developed to support a strong, professional and vibrant public service. The Merit Commissioner is responsible for conducting random audits of public service appointments, undertaking "merit performance reviews" of system-wide issues respecting the application of the merit principle, issuing surveys to assess the attitude of public service employees towards the application of merit. In addition, the Merit Commissioner is the final arbitrator for unsuccessful applicants for appointment to positions in the BC Public Service.

The deputy minister responsible for the BC Public Service Agency is accountable for personnel management in the public service including but not limited to the following:

(a) advising the minister respecting personnel policies, standards, regulations and procedures;

(b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;

(c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;

(d) developing, providing, assisting in or coordinating staff training, educational and career development programs;

(e) developing, establishing and maintaining job evaluation and classification plans;

(f) acting as bargaining agent for the government in accordance with section 3 of the *Public Service Labour Relations Act* [R.S.B.C. 1996, c. 387]

(g) developing, establishing and maintaining occupational health and safety programs;

(h) developing and implementing employment equity policies and programs;

(i) conducting studies and investigations respecting staff utilization;

(j) carrying out research on compensation and working conditions;

(k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;

(l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with the *Public Service Act* and the regulations;

(m) establishing and maintaining a personnel management information system;

(n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.

Selection Criteria

The position of Merit Commissioner and deputy minister responsible for the BC Public Service Agency calls for an extensive background in human resource management, with experience in having developed, implemented, or reviewed human resource policies and practices within a large, complex organization; experience in effectively managing a multi-faceted, large scale organization; and exceptional communication and interpersonal skills. Some of the specific criteria used by the Committee to assess applicants included:

- awareness of the principles of administrative fairness;
- commitment to the application of merit and the its fundamental importance in public service hiring;
- commitment to the independence of the position of Merit Commissioner;
- understanding of the political process, including the functions of political parties, news media and other agencies;
- champion and sponsor innovation and change activities;
- experience in senior-level management and administration;
- experience in managing staff and establishing organizational priorities;

- capacity to generate organizational commitment to the vision and to action that is aligned with the organization's strategic direction.

The Committee's selection criteria formed the basis of a Position Profile, Candidate Profile and Screening Matrix, which were used to assess each application for the position and each candidate. To ensure consistency and fairness, each candidate on the short list was asked a standard set of 17 interview questions, which was also developed from the Committee's selection criteria.

RECOMMENDATION

Your committee unanimously recommends to the Legislative Assembly, pursuant to section 5 of the *Public Service Act* [R.S.B.C. 1996, c. 385] that Diane Rabbani be appointed the Public Service Employee Relations Commissioner, Deputy Minister responsible for the Public Service Employee Relations Commission and to hold the office as the Merit Commissioner for the Province Of British Columbia.

BIOGRAPHICAL NOTES

Diane Rabbani joined government in 2003 with a mandate to recruit, retain and develop its leaders with the goal of achieving excellence in the public service. As Deputy Minister of the BC Leadership Centre she guided the development of succession planning as government restructured thereby ensuring key positions are filled strategically as senior public servants retire.

At the end of her first three months, Acting Deputy Minister of the Public Service Agency and Acting Merit Commissioner were added to her mandate, which has her overseeing the continuation of Public Service Renewal. In this capacity she leads government-wide initiatives focused on achieving service excellence, improving individual accountability, enhancing sound human resources governance, and applying the principles of merit to human resource programs and services across government.

Deputy Rabbani has held executive human resource positions with many Canadian and U.S. companies, including Sobey's, Intrawest, Canadian Pacific and Marriott. Her expertise in strategic human resources and building strong service cultures earned her the 1998 BC Award of Distinction from the Human Resources Management Association.

ADVERTISEMENT

The following advertisement was approved by the Special Committee to Appoint a Merit Commissioner. The advertisement was published in the *Careers* section of four daily newspapers in British Columbia and one national newspaper between April 10 and April 12, 2004.

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

A Special Committee of Members of the Legislative Assembly of British Columbia has been established to recommend to the Legislature the appointment of a Merit Commissioner. The Committee invites qualified applicants to submit their resumes for consideration.

SPECIAL COMMITTEE TO APPOINT A MERIT COMMISSIONER

Jeff Bray, MLA *Chair* Victoria-Beacon Hill

The position encompasses three primary responsibilities: Merit Commissioner, head of the B.C. Public Service Agency, and the deputy minister responsible for the B.C. Public Service Agency. The role of the Merit Commissioner is to oversee the application of merit in the public service through undertaking audits of public service appointments; preparing of an annual report to the Legislative Assembly detailing the work of the Commissioner; and preparing special reports on the application of the merit principle in the public service. As the Agency head and deputy minister, the successful candidate is responsible for personnel management in the public service, including providing direction to ministries conducting personnel polices, developing and implementing mechanisms to ensure effective human resource planning, and recruiting and training of persons within the public service.

The successful candidate will have a variety of skills. She or he must:

- be impartial
- be able to interpret legislation concerning public sector employment, including the *Public Service Act*
- have experience in public sector mediation and bargaining
- possess excellent communications skills
- have experience in developing and conducting human resource compliance audits
- have expertise in preparing special reports and system-wide reviews concerning human resource practices

The appointment is for a three-year term of office. The salary for this position is equal to the range of salaries paid to a deputy minister, based on experience. The office of the Commissioner is located in Victoria. More information on the position can be obtained from the website, listed below.

Electronically formatted applications should be received by the Clerk of Committees at the e-mail address below no later than April 23, 2004. Applications will be held in confidence.

ADDRESS ALL APPLICATIONS AND INQUIRIES TO:

Craig James
Clerk Assistant and
Clerk of Committees
Room 224, Parliament Buildings
Victoria, BC V8V 1X4

Toll free in BC: 1-877-428-8337
Tel: (250) 356-2933 (collect)
E-mail: ClerkComm@leg.bc.ca
www.leg.bc.ca/cmt

PUBLIC SERVICE ACT, PART 2, 3 AND 4

Note: The sections of the Public Service Act [RSBC 1996] CHAPTER 385 reproduced below are for informational purposes only. The full printed version of the Act remains the official version.

Part 2 - BC Public Service Agency

BC Public Service Agency

5 (1) The division of the government known as the Public Service Employee Relations Commission is continued as the BC Public Service Agency under the administration of the minister.

(2) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an individual to be the agency head and deputy minister responsible for the agency and to hold office as the Merit Commissioner under this Act.

(2.1) The Legislative Assembly must not recommend an individual to be appointed under subsection (2) unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.

(2.2) The individual appointed under subsection (2) is to be appointed for a term of 3 years and may be reappointed in the manner provided in this section for further 3 year terms.

(2.3) [Repealed 2003-88-4.]

(2.4) The Lieutenant Governor in Council may appoint an individual to act for the individual appointed under subsection (2) if

(a) the office is or becomes vacant when the Legislative Assembly is not sitting,

(b) the individual appointed under subsection (2) is suspended when the Legislative Assembly is not sitting, or

(c) the individual appointed under subsection (2) is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under subsection (2) before the end of the session.

(2.5) An individual appointed under subsection (2.4) holds office until

(a) an individual is appointed under subsection (2),

(b) the suspension of the individual appointed under subsection (2) ends, or

(c) the Legislative Assembly has sat for 30 days after the date of the appointment of the individual appointed under subsection (2.4),

whichever is the case and whichever occurs first.

(3) The agency head is responsible for personnel management in the public service including but not limited to the following:

(a) advising the minister respecting personnel policies, standards, regulations and procedures;

(b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;

(c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;

(d) developing, providing, assisting in or coordinating staff training, educational and career development programs;

(e) developing, establishing and maintaining job evaluation and classification plans;

(f) acting as bargaining agent for the government in accordance with section 3 of the *Public Service Labour Relations Act;*

(g) developing, establishing and maintaining occupational health and safety programs;

(h) developing and implementing employment equity policies and programs;

(i) conducting studies and investigations respecting staff utilization;

(j) carrying out research on compensation and working conditions;

(k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;

(l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;

(m) establishing and maintaining a personnel management information system;

(n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.

(4) Subject to this Act and the regulations and on the recommendation of the agency head, the minister may issue policies respecting the matters referred to in subsection (3).

Merit commissioner

5.1(1) The merit commissioner is responsible for monitoring the application of the merit principle under this Act by

(a) conducting random audits of appointments to and from within the public service to assess whether

(i) the recruitment and selection processes were properly applied to result in appointments based on merit, and

(ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed, and

(b) reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made.

(2) In carrying out his or her responsibilities as merit commissioner under this section he or she must not conduct audits or issue reports in respect of the period before June 5, 2001.

(3) If the merit commissioner is absent or unable to act, another official authorized by the merit commissioner has the powers and must perform the functions and duties of the merit commissioner under this Act.

Annual report of merit commissioner

5.2(1) The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made under this section.

(2) The Speaker must lay each annual report before the Legislative Assembly as soon as practicable, if it is in session.

(3) If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.

(4) The report of the merit commissioner under this section must not disclose

(a) personal information, as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act, relating to individuals who applied for or were appointed to positions in the public service, or

(b) the identity of persons who participated on behalf of the ministries, boards, commissions, agencies or organizations, as the case may be, in the selection of the individuals appointed to positions in the public service.

Delegation

6 Subject to the regulations, the agency head may

(a) delegate any of his or her powers, duties or functions under this Act or the regulations to an employee of the agency,

(b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act or the regulations, other than as the merit commissioner, to

(i) a deputy minister or other employee of the ministry, or

(ii) a member, officer or employee of the board, commission, agency or organization,

(c) delegate dismissal authority under section 22 (2)

(i) to an assistant deputy minister or an employee who has an equivalent classification level to an assistant deputy minister, and

(ii) to a member or officer of a board, commission, agency or organization to which this Act applies,

(d) establish conditions, standards or requirements for any delegation, and

(e) amend, replace or revoke any delegation made under this section.

Access to facilities and records

7 For the purposes of carrying out his or her duties as agency head and merit commissioner, the agency head is entitled to access to

(a) ministries,

(b) boards, commissions, agencies and organizations that are declared to be subject to this section under section 3, and

(c) records, of ministries or of those boards, commissions, agencies and organizations, containing information pertinent to those duties or to personnel matters.

Part 3 - Appointments to the Public Service

Appointments on merit

8 (1) Subject to section 10, appointments to and from within the public service must

(a) be based on the principle of merit, and

(b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.

(2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.

(3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate

(a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and

(b) the long term career development and advancement of employees appointed under this Act.

(4) Subject to the regulations, the agency head may direct in respect of a vacancy or class of vacancies in the public service, that applicants be

(a) limited or given preference in a manner intended to achieve employment equity objectives,

(b) limited to employees to encourage career development and advancement,

(c) limited to employees of a stated occupational group, position level or organizational unit, or

(d) limited to a stated geographical area or locale.

Probation

9 (1) If a person who is not an employee is appointed to a position in the public service, the person is on probation until he or she has worked the equivalent of 6 months' full time employment.

(2) If the appointment is made from within the public service, a probation period in the new position not exceeding the equivalent of 6 months' full time employment may be imposed.

(3) A deputy minister or the agency head may reject an employee during the probation period if the deputy minister or agency head considers that the employee is unsuitable for employment in the position to which he or she was appointed.

Exceptions to section 8

10 Subject to the regulations

(a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and

(b) section 8 (1) (b) does not apply to the following:

(i) a temporary appointment of not more than 7 months in duration;

(ii) an appointment of an auxiliary employee;

(iii) a direct appointment by the agency head in unusual or exceptional circumstances.

Section Repealed

11 [Repealed 2003-88-10.]

Deputy ministers

12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.

(2) An associate deputy minister has all the powers of a deputy minister.

(3) Sections 5.1, 8 and 18 do not apply to appointments under this section.

Deputy ministers' pensions

13 (1) Subject to subsection (2), when calculating the amount of a pension under the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.

(2) Subsection (1) does not apply

(a) to a person appointed as a deputy minister on or after September 1, 2001, or

(b) to a person holding the position of acting deputy minister.

(2.1) Despite subsection (2) (a), subsection (1) continues to apply to a person who is a deputy minister before September 1, 2001 and is reappointed as a deputy minister on or after that date as long as there is no break in service as a deputy minister.

(3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Declaration of deputy minister status

14 The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

Appointment by Lieutenant Governor in Council

15 (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers

(a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or

(b) will be appointed to a position that requires special professional, technical or administrative qualifications.

(2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.

(3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

Part 4 - Review of Staffing Decisions

Definitions

16 In this Part, "deputy minister" means,

(a) with respect to a position in a ministry, the deputy minister of that ministry, and

(b) with respect to a position with a board, commission, agency or organization, the person having overall responsibility for the board, commission, agency or organization.

Request for feedback on staffing decision

17 (1) An employee who is an unsuccessful applicant for an appointment to the public service may, within the prescribed time, request from the individual responsible for the appointment an explanation of the reasons why he or she was not appointed.

(2) The responsible individual must provide an explanation as soon as practicable after receiving a request under subsection (1).

Inquiry into staffing decision

18 (1) An employee who has made a request under section 17 may request an inquiry into the application of section 8 (1) with respect to the appointment.

(2) A request under subsection (1) must be made within the prescribed period to the deputy minister responsible for the position and must include a detailed statement specifying the grounds on which the request is made.

(3) The deputy minister who receives an application under subsection (1), or a person designated by the deputy minister, must inquire into the appointment and confirm the appointment or proposed appointment or direct that the appointment or proposed appointment be reconsidered.

Review by merit commissioner

19 (1) An employee who is an unsuccessful applicant for an appointment to a position in a bargaining unit under the *Public Service Labour Relations Act* who has made a request under section 18 and disagrees with the decision of the deputy minister or designate under that section may request a review of the appointment by the merit commissioner on the ground that section 8 (1) has not been complied with.

(2) A request under subsection (1) must be made in writing within the prescribed period to the merit commissioner and may only be based upon the grounds submitted to the deputy minister under section 18 (2).

(3) Subject to the regulations, the merit commissioner must establish the procedure for the expeditious consideration of requests for reviews under subsection (1).

(4) If an applicant requests a review under subsection (1), the merit commissioner must, before undertaking the review, inform the deputy minister of the review.

(5) The merit commissioner may summarily dismiss a request for a review under subsection (1) if

(a) the request for review is not made within the time limit prescribed under subsection (2),

(b) the merit commissioner considers that the request for review is frivolous, vexatious or trivial or is not made in good faith,

(c) the request for review does not contain sufficient information to determine whether section 8 (1) has been complied with, or

(d) the grounds, even if proven, are not sufficient to establish that section 8 (1) has not been complied with.

(6) After conducting a review, the merit commissioner may

(a) dismiss the review, or

(b) direct that the appointment or the proposed appointment be reconsidered.

(7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

Inquiry Act

20 For the purpose of a review under section 19, the merit commissioner has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of he *Inquiry Act*.

Decision final

20.1 A decision of the merit commissioner under section 19 is final and binding.